

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 37/2020  
[2020] NZSC 72**

BETWEEN                      YINGQIU ZHANG  
                                         Applicant

AND                              WESTPAC NEW ZEALAND LIMITED  
                                         Respondent

Court:                              Glazebrook, Ellen France and Williams JJ

Counsel:                          Applicant in person  
                                         B J Upton and L B Harrison for Respondent

Judgment:                        27 July 2020

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**JUDGMENT OF THE COURT**

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**A        The application for leave to appeal is dismissed.**

**B        The applicant must pay the respondent costs of \$2,500.**

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**REASONS**

**Introduction**

[1]        On 25 September 2019, Ms Zhang was adjudicated bankrupt.<sup>1</sup> On 9 October 2019 she appealed to the Court of Appeal against that decision. She was advised by the Court of Appeal Registry that security for costs had been set at \$7,060. An application for dispensation was declined by the Deputy Registrar on 13 December 2019. Ms Zhang's application for review of the Deputy Registrar's decision was dismissed by Brown J on 4 May 2020.<sup>2</sup> She now seeks leave to appeal to this Court.

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<sup>1</sup>        *Zhang v Westpac New Zealand Ltd* [2019] NZHC 2422 (Associate Judge Paulsen).

<sup>2</sup>        *Zhang v Westpac New Zealand Ltd* [2020] NZCA 138 (Brown J) [Review application].

## **Further background**

[2] The bankruptcy proceeding arose because Ms Zhang defaulted on loans owed to the respondent (Westpac). After mortgagee sales, there remained a shortfall. Westpac obtained summary judgment for that shortfall and issued bankruptcy proceedings.

[3] Ms Zhang's application for leave to appeal in relation to the summary judgment and for the suspension of the order of bankruptcy was dismissed by the High Court on 1 November 2019.<sup>3</sup>

[4] An application to the Court of Appeal for a stay of the order for adjudication was declined on 20 December 2019.<sup>4</sup>

[5] This Court, on 31 March 2020, dismissed Ms Zhang's application for leave to appeal that decision.<sup>5</sup>

## **Decision of the Deputy Registrar on the dispensation application**

[6] The Deputy Registrar noted that, unlike most applications to dispense with security for costs, Ms Zhang did not raise impecuniosity as a ground for dispensation. No information had been supplied or offered concerning her financial circumstances or sources of funding.

[7] So far as the merits of the appeal were concerned, the Deputy Registrar held that "security for costs would still be appropriate because the appeal is weak, involves no substantive issue of public interest, and is not one that it seems a reasonable and solvent litigant would pursue".

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<sup>3</sup> *Zhang v Westpac New Zealand Ltd* [2019] NZHC 2797 (Associate Judge Paulsen).

<sup>4</sup> *Zhang v Westpac New Zealand Ltd* [2019] NZCA 682 (Kós P, Brown and Goddard JJ).

<sup>5</sup> *Zhang v Westpac New Zealand Ltd* [2020] NZSC 26 (Glazebrook and Ellen France JJ).

## **Brown J's decision**

[8] On the review application dealt with by Brown J, impecuniosity was relied on. The Judge did not, however, consider that the additional information established that Ms Zhang was unable to pay security for costs.<sup>6</sup>

[9] Ms Zhang also sought to raise a number of new arguments as to the merits of the appeal, all of which were rejected by Brown J.<sup>7</sup> He also accepted Westpac's submission that there was no public interest involved in the appeal.<sup>8</sup> In conclusion, Brown J said:

[21] In my view Ms Zhang's intended appeal against the order adjudicating her bankrupt is not one which a reasonable and solvent litigant would pursue. I agree with the decision of the Deputy Registrar that it would not be right to require Westpac to defend the judgment under appeal without the normal security for costs. Consequently Ms Zhang has failed to demonstrate that the present case is one which falls within the category where security for costs should properly be dispensed with.

## **Our assessment**

[10] No issue of general or public importance arises.<sup>9</sup> Both the Deputy Registrar and Brown J applied the principles applicable to dispensation from security for costs set out in this Court's decision in *Reekie v Attorney-General*.<sup>10</sup> None of the grounds raised by Ms Zhang suggest that Brown J erred in reaching his conclusion that a reasonable and solvent litigant would not pursue the appeal.

## **Result**

[11] The application for leave to appeal is dismissed.

[12] The applicant must pay the respondent costs of \$2,500.

Solicitors:  
Simpson Grierson, Auckland for Respondent

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<sup>6</sup> Review application, above n 2, at [12]–[14].

<sup>7</sup> At [15]–[18].

<sup>8</sup> At [20].

<sup>9</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>10</sup> *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737 at [31] and [35].